



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

October 10, 2007

Scot Scialpi
The Irvine Company
550 Newport Center Drive
Newport Beach, CA 92260

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED PLANNING AREA 39, CITY OF IRVINE, COUNTY OF ORANGE (ACOE REFERENCE NO. 2007-764)

Dear Mr. Scialpi:

On July 30, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Glenn Lukos Associates for the proposed Planning Area 39 (PA 39, a.k.a. Tentative Tract 17216) in the City of Irvine. The application was deemed complete on August 29, 2007. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description:

Construction of approximately 3,700 residential homes on 252-acres of a 398-acre property. The remaining 146-acres will be preserved as open space. The developed portion of PA 39 is largely bound by San Diego Creek and Needlegrass Creek on the west, Interstate 405 on the north, Irvine Center Drive on the east, and Bake Parkway on the south. As part of the project, existing channel grade stabilization structures within San Diego Creek will be rehabilitated. An existing at-grade Arizona crossing through San Diego Creek will be replaced with either an arched-culvert or span bridge that will be able to pass the 100-year storm flow event beneath it. Grading along the east bank of San Diego Creek will be needed to prepare the adjacent uplands for construction. In addition, a paved trail will be constructed along the east bank of San Diego Creek. The trail will cross the Creek in order to connect to a pedestrian under-crossing beneath I – 405. PA 39 will require the

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construction of an above-ground reservoir and associated access road west of Laguna Canyon Road. The construction of the reservoir and access road will require Certification; however, the Certification will be sought separately by the Irvine Ranch Water District (IRWD). The site is located within Sections 157 and 138 of Township 6 South, Range 8 West of the U.S. Geological Survey *El Toro, California* and *Tustin, California* 7.5-minute topographic quadrangle maps (33.6403 degrees N/-117.7492 degrees W).

Receiving water: San Diego Creek and two un-named tributaries thereto.

Fill area: 2.06 acres of permanent impact to riparian drainages, including 1.99 acres of impact to in-stream wetlands (3,190 linear feet).

Dredge/Fill volume: Not Applicable

Federal permit: U.S. Army Corps of Engineers Individual Permit.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Nuisance flow and 'first-flush' discharges from the residential portions of PA 39 will be treated in four extended detention basins. The basins are natural treatment system facilities that are part of IRWD's San Diego Creek Natural Treatment System Master Plan (Master Plan), adopted in April 2004. The Master Plan facilities are identified as Natural Treatment System (NTS) 69A, NTS 69B, NTS 69C and NTS 69F. The NTSs would be maintained by IRWD. In the event that IRWD refuses to accept these facilities, they will be owned, operated, and maintained by a homeowner's association.
- Impacts to the beneficial uses of the filled waters will be compensated for through the creation of 4.7 acres of riparian/wetland, to be developed within in-line basins as part of a constructed drainage feature at the former location of the Laguna Canyon Dam and Reservoir. Additional acreage will be created as part of an effort to also address discharges of fill associated with PA 18.

- Additional site-specific best management practices (BMPs) will be specified in the site's Storm Water Pollution Prevention Plan(s) (SWPPP) and final Water Quality Management Plan(s) (WQMP).

Offsite Water Quality Standards Mitigation Proposed:

- No off-site water quality standards mitigation is proposed.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a Storm Water Pollution Prevention Plan to control discharges from the project site.

The mitigation proposal is described in detail in the Planning Areas 18 & 39 Conceptual Habitat Mitigation and Monitoring Plan, dated February 2006 and prepared by Glenn Lukos Associates (Mitigation Plan). The Mitigation Plan had been provided as part of an application for Certification for PA 18. PA18 was certified on July 25, 2006.

The mitigation identified in February 2006 Mitigation Plan involves a total of 8.44 acres of created waters of the U.S. The waters created were proposed to mitigate for discharges of fill to water of the U.S. on both PA 18 and on the adjacent PA 39. At that time, development of PA 39 was not anticipated to occur until the year 2013. However, development is now planned for early 2008.

As part of your application for Certification for PA 39, you have submitted the PA 39 Conceptual Habitat Mitigation and Monitoring Plan, dated July 25, 2007. The July 25, 2007 Mitigation Plan augments the information provided in the February 2006 Mitigation Plan.

You have submitted an application for a Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act (CEQA), the City of Irvine certified an Environmental Impact Report on June 14, 2006. The Executive Officer has considered the City's EIR in the issuance of this Certification.

This 401 Certification is contingent upon the execution of the following conditions:

1. The proposed NTS' must be constructed and operational prior to occupancy of any proposed residence within their respective tributary area. The NTS shall be sized and designed according to published and generally accepted engineering design criteria.
2. The Irvine Company must fully implement the proposed Mitigation Plans for both PA 18 and PA 39 for the purpose of creating 4.7 acres of riparian/wetlands for the PA 39 project. The mitigation effort must include the creation of 1.99 acres of wetlands, exclusive of those wetlands proposed for PA 18.
3. Regional Board staff and other authorized representatives must be allowed:
 - a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification or applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification or applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification or applicable waste discharge requirements.
4. This Certification and any subsequent amendments shall be maintained on site as a denoted element of any SWPPP or WQMP.
5. This Certification is transferable only upon written notice to the Executive Officer. The notice shall include written acknowledgement of this Certification by the transferee's authorized representative.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that

application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all

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conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jae Chung
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
California Department of Fish and Game, Ontario Office – Naeem Siddiqui
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

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